

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In Re: AUTOMOTIVE PARTS ANTITRUST LITIGATION	:	
In Re: All Cases	:	Master File No. 12-md-02311
THIS DOCUMENTS RELATES TO:	:	Honorable Marianne O. Battani
END-PAYOR ACTIONS	:	
DEALERSHIP ACTIONS	:	
TRUCK AND EQUIPMENT DEALER ACTIONS	:	

**PLAINTIFFS' MOTION TO SET AN EXPEDITED BRIEFING AND HEARING
SCHEDULE ON INDIRECT PURCHASER PLAINTIFFS' MOTION FOR AN ORDER
DIRECTING DEFENDANTS TO PAY HALF OF THE PARTIES' COSTS RELATING
TO OEM DISCOVERY**

Plaintiffs¹, through their counsel, for the reasons described in the attached Brief, move this Court pursuant to Local Rule 1.2 for an Order to set an expedited briefing and hearing schedule on *Indirect Purchaser Plaintiffs' Motion for an Order Directing Defendants² to Pay Half of the Parties' Costs Relating to OEM Discovery*.

¹ "Plaintiffs," as used herein, refers to the indirect purchaser plaintiff parties in the parts cases that are coordinated in *In re Automotive Parts Antitrust Litigation*, No. 2:12- md-02311-MOB-MKM (E.D. Mich.) ("IPP Parts Cases"), including: End-Payor Plaintiffs ("EPPs"); Automobile Dealer Plaintiffs ("ADPs"); and, Truck and Equipment Dealer Plaintiffs ("TEDPs").

² "Defendants," as used herein, refers to entities that have been Defendants in the *IPP Parts Cases* at any point in time since the Court ordered coordination on third-party discovery on or about January 28, 2015. See Status Conf./Mot. Hrg. Tr. 43-46, *In re Automotive Parts Antitrust Litig.*, 12-md-02311 (E.D. Mich. Jan. 28, 2015) (Battani, J.), ECF No. 892 ("ECF No. 892"). The Defendants that are subject to this motion include: Bosal Industries-Georgia, Inc.; Tokai

Plaintiffs seek the following schedule to expeditiously resolve this dispute:

- Defendants will file any opposition to *Indirect Purchaser Plaintiffs' Motion for an Order Directing Defendants to Pay Half of the Parties' Costs Relating to OEM Discovery* 7 days from the filing date of that Motion.
- Plaintiffs will file any reply 3 days from the date Defendants file their opposition
- The hearing on Plaintiffs' Motion will take place the week following the filing of the Reply

Plaintiffs seek the following schedule for any appellate briefing, should any Defendants seek to appeal the Master's Order on this Motion to Judge Battani:

- Any Motions to Modify due 7 days from the date of the filing of the Order on *Indirect Purchaser Plaintiffs' Motion for an Order Directing Defendants to Pay Half of the Parties' Costs Relating to OEM Discovery*.
- Oppositions to Motions to Modify will be due 7 days from the date Motions to Modify are filed.
- Replies will be due 3 days from the date Oppositions are filed.

In accordance with Local Rule 7.1, on April 30, 2018, counsel for Plaintiffs explained the nature of the motion and its legal basis to counsel for Plaintiffs and requested but did not obtain concurrence.

Kogyo Co., LTD, Green Tokai Co., LTD; Hitachi, Ltd., Hitachi Automotive Systems, Ltd., Hitachi Automotive Systems Americas, Inc.; Kayaba Industry Co., Ltd. d/b/a KYB Corporation, KYB Americas Corporation; Maruyasu Industries Co., Ltd., Curtis-Maruyasu America, Inc. (together, "Maruyasu");, Mikuni Corporation, Mikuni American Corporation; Mitsubishi Heavy Industries, Ltd., Mitsubishi Heavy Industries America, Inc., Mitsubishi Heavy Industries Climate Control, Inc.; Panasonic Corporation, Panasonic Corporation of North America; Sanoh Industrial Co., Ltd, Sanoh America, Inc.; Showa Corporation, American Showa, Inc.; Toyoda Gosei Co., Ltd, Toyoda Gosei North America Corp., TG Missouri Corp. (together, "Toyoda Gosei")

Dated May 1, 2018

Respectfully submitted,

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**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION TO SET AN EXPEDITED
BRIEFING AND HEARING SCHEDULE ON INDIRECT PURCHASER PLAINTIFFS'
MOTION FOR AN ORDER DIRECTING DEFENDANTS TO PAY HALF OF THE
PARTIES' COSTS RELATING TO OEM DISCOVERY**

STATEMENT OF THE ISSUE

Given that Plaintiffs require the OEMs' production for their class certification motion, due in fewer than six months, and that the process of negotiating this production has already lasted over three years, should this Court order an expedited briefing and hearing schedule, to allow the issue of cost-sharing to be promptly resolved, so that the OEMs may make their production?

CONTROLLING OR MOST APPROPRIATE AUTHORITIES

Rules

L.R. 1.2

Cases

People v. Spencer, 2007 WL 2127685, No. 07-cv-12193 (E.D.Mich. July 23, 2007)

U.S. Twenty One Thousand Dollars in U.S. Postal Money Orders and Seven Hundred Eighty-Five Dollars in U.S. Currency, 298 F.Supp.2d 597 (E.D. Mich. 2003)

**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION TO SET AN EXPEDITED
BRIEFING AND HEARING SCHEDULE**

As ordered by this Court, Plaintiffs and Defendants collaborated to serve OEMs with a targeted set of discovery requests seeking documents and information highly relevant to the Auto Parts cases. During the course of the discovery process, Plaintiffs and Defendants worked together to substantially narrow the scope of the requests and reached concessions with the OEMs on behalf of the parties that they represent. It took the parties over three years to accomplish a final resolution with the OEMs on this discovery process. The process took an extended period of time not only because it was extremely difficult to negotiate with the OEMs, but also because the coordination among different groups of Plaintiffs and over forty Defendants' families necessarily required a huge amount of time and the efforts from all parties involved in this litigation.

Orders were issued for the Six Lead OEMs, detailing the specific categories of data and documents to be produced by each, and reflect the needs of both Plaintiffs and Defendants to support their claims and defenses. When the orders were issued, parties focused on the Bearings and AVRPs cases as those were the cases that had deadlines set for briefing on class certification motions.

Following the resolution of Plaintiffs' cases in Bearings and AVRPs, Plaintiffs timely informed the OEMs that upstream purchase information pertaining to these two cases was no longer needed. As the Court has set a briefing schedule for class certification motions in *In re Occupant Safety Restraint Systems Antitrust Litig.*, 2:12-0603-MOB-MKM (E.D. Mich.) ("OSS"), requiring the Plaintiffs to file their opening class certification motions on October 17,

2018, Plaintiffs reengaged with the OEMs to discuss how and when information pertaining to OSS can be produced, as well as the cost for the productions.

A number of OEMs now stand ready to produce some or all of the information that has been ordered and are working with the Parties to finalize the details, including cost for production on each category of information that was ordered by the Court.

However, in the past few months, Defendants have not been cooperating with Plaintiffs in working out the cost issues together with the OEMs, as required by the orders on OEM productions. Plaintiffs have explained the urgency in receiving the OEM productions and requested cooperation from the Defendants on communications with the OEMs, but to little avail. Defendants even suggested that they had the right to unilaterally reject the productions by the OEMs that were ordered by this Court, because they would not need or pursue this information at this time. Defendants' position would completely reverse the course of the OEM discovery process because it necessarily suggests a piecemeal approach to obtaining information from the OEMs, which would violate the Court's instructions and orders. It would also frustrate and overly burden the OEMs who are third parties to this litigation, and who have already gone through multiple briefings with the parties to resolve their issues in the discovery process.

Local Rule 1.2 states "[f]or good cause shown ... any Judge of this Court may temporarily suspend the operation of the Rules." E.D. Mich. L.R. 1.2. As stated above, good cause exists for granting the relief sought by Plaintiffs. Courts in this district routinely grant motions under Local Rule 1.2. when good cause is shown. *See e.g. People v. Spencer*, 2007 WL 2127685 No. 07-cv-12193 at 1 (E.D.Mich. July 23, 2007) ("Spencer asserts that his limited access to a law library, typewriter and pen make it difficult for him to complete a brief in support of his motion. The court grants this request and considers the motion even though not accompanied by a brief.");

U.S. Twenty One Thousand Dollars in U.S. Postal Money Orders and Seven Hundred Eighty-Five Dollars in U.S. Currency, 298 F.Supp.2d 597, 602 (E.D. Mich. 2003) (“In this case, Claimant's opposition to the motion demonstrates that there is no concurrence in the motion. Furthermore, efficiency would be served by adjudicating the motion. The Court will therefore apply Local Rule 1.2, temporarily suspend the requirement of the local rules for this particular matter, and address the motion on the merits.”)

Here, as stated above, and as established in *Indirect Purchaser Plaintiffs’ Motion for an Order Directing Defendants to Pay Half of the Parties’ Costs Relating to OEM Discovery*, in addition to the three years that has been spent by the parties on reaching a final resolution with the OEMs on the discovery disputes, Defendants further delayed the OEM productions that were ordered by the Court over a year ago. Under the normal briefing schedule set forth in Local Rule 7.1, a response to the motion would be due by May 15, 2018, and any reply brief would be due by May 22, 2018. E.D. Mich. L.R. 7.1(d)(2). After that, the Court may hear the matter and issue an order at a later date. The Defendants can then appeal that order and further delay the time for Plaintiffs to receive the OEM productions.

As stated above, the current deadline for Plaintiffs to file their class certification motions is only a few months away, and Plaintiffs’ counsel and their experts have yet to review and analyze the OEM productions that they have continuously pursued for years, based on the high relevance of the information. Plaintiffs will be prejudiced if they are forced to receive this highly relevant information within a month or even a few weeks before the deadline for filing the class certification motions.

Because Plaintiffs have established good cause for this Court to consider the *Indirect Purchaser Plaintiffs’ Motion for an Order Directing Defendants to Pay Half of the Parties’*

Costs Relating to OEM Discovery on an expedited schedule, the Court should grant this motion under Local Rule 1.2.

CONCLUSION

Plaintiffs respectfully request that this Court grant this Motion issuing an Order setting an expedited briefing and hearing schedule for resolution of *Indirect Purchaser Plaintiffs' Motion for an Order Directing Defendants to Pay Half of the Parties' Costs Relating to OEM Discovery*.

Plaintiffs thus request the Court to enter the following briefing schedule:

- Defendants will file any opposition to *Indirect Purchaser Plaintiffs' Motion for an Order Directing Defendants to Pay Half of the Parties' Costs Relating to OEM Discovery* 7 days from the filing date of that Motion.
- Plaintiffs will file any reply 3 days from the date Defendants file their opposition.
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Plaintiffs seek the following schedule for any appellate briefing, should any Defendants seek to appeal the Master's Order on this Motion to Judge Battani:

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Dated May 1, 2018

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CERTIFICATE OF SERVICE

I hereby certify that on May 1, 2018 I electronically filed the foregoing papers with the Clerk of the Court using the ECF system which will send electronic notices of same to all counsel of record.

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